

AMENDED IN ASSEMBLY MARCH 1, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 10

**Introduced by Assembly Members Correa, Davis, and
Ducheny**
*(Principal coauthors: Assembly Members Hertzberg and
Nakano)*

December 7, 1998

An act to amend ~~Sections 23153 and~~ *Section 23221* of the Revenue and Taxation Code, relating to taxation, ~~to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 10, as amended, Correa. Bank and corporation taxes: minimum franchise tax.

~~The Bank and Corporation Tax Law generally imposes a franchise tax on corporations doing business within the limits of this state, including a minimum franchise tax on specified banks and corporations, except as provided, and provides, for income years beginning on or after January 1, 1999, for a minimum franchise tax of \$500 for the 2nd taxable year for any corporation, except as specified, that has gross receipts, less returns and allowances reportable to this state, of less than \$1,000,000 for the income year. The reduced tax applies to any corporation that is a qualified new corporation, as defined, incorporated on or after January 1, 1999.~~

~~This bill would provide that for income years beginning on or after January 1, 2000, every qualified new corporation shall~~

~~not be subject to the minimum franchise tax for the first taxable year and shall pay annually to this state a minimum franchise tax of \$500 for the 2nd taxable year.~~

The Bank and Corporation Tax Law provides that a corporation that incorporates under the laws of this state or qualifies to transact interstate business in this state shall prepay a specified minimum franchise tax of \$800, except as provided. That law also provides that, for income years commencing on or after January 1, 1999, the amount of the prepaid minimum franchise tax for a qualified new corporation, as defined, shall be \$300, unless its gross receipts, as specified, or its tax liability, exceeds specified amounts.

This bill would provide that, for income years commencing on or after January 1, 2000, the amount of the prepaid minimum franchise tax for a qualified new corporation shall be \$0 for its first taxable year.

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 23153 of the Revenue and~~
- 2 ~~Taxation Code is amended to read:~~
- 3 ~~23153. (a) Every corporation described in~~
- 4 ~~subdivision (b) shall be subject to the minimum franchise~~
- 5 ~~tax specified in subdivision (d) from the earlier of the~~
- 6 ~~date of incorporation, qualification, or commencing to do~~
- 7 ~~business within this state, until the effective date of~~
- 8 ~~dissolution or withdrawal as provided in Section 23331 or,~~
- 9 ~~if later, the date the corporation ceases to do business~~
- 10 ~~within the limits of this state.~~
- 11 ~~(b) Unless expressly exempted by this part or the~~
- 12 ~~California Constitution, subdivision (a) shall apply to~~
- 13 ~~each of the following:~~
- 14 ~~(1) Every corporation that is incorporated under the~~
- 15 ~~laws of this state.~~
- 16 ~~(2) Every corporation that is qualified to transact~~
- 17 ~~intrastate business in this state pursuant to Chapter 21~~



~~(commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.~~

~~(3) Every corporation that is doing business in this state.~~

~~(e) The following entities are not subject to the minimum franchise tax specified in this section:~~

~~(1) Credit unions.~~

~~(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.~~

~~(d) (1) Except as provided in paragraph (2), corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).~~

~~(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:~~

~~(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.~~

~~(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.~~

~~(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.~~

~~(c) Notwithstanding subdivision (a), for income years beginning on or after January 1, 1999, every "qualified~~

1 ~~new corporation” shall pay annually to the state a~~
2 ~~minimum franchise tax of five hundred dollars (\$500) for~~
3 ~~the second taxable year, and for income years beginning~~
4 ~~on or after January 1, 2000, every qualified new~~
5 ~~corporation shall not be subject to the minimum franchise~~
6 ~~tax for the first taxable year and shall pay annually to the~~
7 ~~state a minimum franchise tax of five hundred dollars~~
8 ~~(\$500) for the second taxable year. This subdivision shall~~
9 ~~apply to any corporation that is a qualified new~~
10 ~~corporation and is incorporated on or after January 1,~~
11 ~~1999.~~

12 ~~(1) The determination of the gross receipts of a~~
13 ~~corporation, for purposes of this subdivision, shall be~~
14 ~~made by including the gross receipts of each member of~~
15 ~~the commonly controlled group, as defined in Section~~
16 ~~25105, of which the corporation is a member.~~

17 ~~(2) “Gross receipts, less returns and allowances~~
18 ~~reportable to this state,” means the sum of the gross~~
19 ~~receipts from the production of business income, as~~
20 ~~defined in subdivision (a) of Section 25120, and the gross~~
21 ~~receipts from the production of nonbusiness income, as~~
22 ~~defined in subdivision (d) of Section 25120.~~

23 ~~(3) “Qualified new corporation” means a corporation~~
24 ~~that begins business operations at or after the time of its~~
25 ~~incorporation and that reasonably estimates that it will~~
26 ~~have gross receipts, less returns and allowances,~~
27 ~~reportable to this state for the income year of less than~~
28 ~~one million dollars (\$1,000,000). “Qualified new~~
29 ~~corporation” does not include any corporation that began~~
30 ~~business operations as a single proprietorship, a~~
31 ~~partnership, or any other form of business entity prior to~~
32 ~~its incorporation. This subdivision shall not apply to any~~
33 ~~corporation that reorganizes solely for the purpose of~~
34 ~~reducing its minimum franchise tax.~~

35 ~~(4) This subdivision shall not apply to limited~~
36 ~~partnerships, as defined in Section 17935, limited liability~~
37 ~~companies, as defined in Section 17941, limited liability~~
38 ~~partnerships, as defined in Section 17948, charitable~~
39 ~~organizations, as described in Section 23703, regulated~~
40 ~~investment companies, as defined in Section 851 of the~~

~~Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.~~

~~(5) For any income year beginning on or after January 1, 1999, if a corporation has paid five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation's gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.~~

~~(f) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (e) of Section 1905 of the Corporations Code and that does not thereafter do business shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.~~

~~(g) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.~~

~~SEC. 2.—~~

~~SECTION 1.~~ Section 23221 of the Revenue and Taxation Code is amended to read:

~~23221. (a) Except as provided under subdivision (b), a corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall~~

1 thereupon prepay a tax of twenty-five dollars (\$25). The
2 prepayment shall be made to the Secretary of State with
3 the filing of the articles of incorporation or the statement
4 and designation by a foreign corporation. The Secretary
5 of State shall transmit the amount of the prepayment to
6 the Franchise Tax Board. The Franchise Tax Board shall
7 certify to the Secretary of State on an individual or class
8 basis those domestic or foreign corporations which are
9 exempt from prepayment or for which prepayment to
10 the Secretary of State is waived.

11 (b) (1) For income years commencing on or after
12 January 1, 1997, and before January 1, 1999, the amount
13 payable by a qualified new corporation under subdivision
14 (a) shall be six hundred dollars (\$600).

15 (2) For income years commencing on or after January
16 1, 1999, *and before January 1, 2000*, the amount payable
17 by a qualified new corporation under subdivision (a) shall
18 be three hundred dollars (\$300).

19 (3) For income years commencing on or after January
20 1, 2000, the amount payable by a qualified new
21 corporation under subdivision (a) shall be zero dollars
22 ~~(\$0) for the first income year and three hundred dollars~~
23 ~~(\$300) for each subsequent income year. (\$0).~~

24 (c) For purposes of this section, “qualified new
25 corporation” means a corporation that begins operation
26 at or after the time of its incorporation and that
27 reasonably estimates that, for the income year, it will have
28 both gross receipts, less returns and allowances
29 reportable to this state, of one million dollars (\$1,000,000)
30 or less and a tax liability under Section 23151 that does not
31 exceed eight hundred dollars (\$800). “Qualified new
32 corporation” does not include any corporation that began
33 business operations as a single proprietorship, a
34 partnership, or any other form of business entity prior to
35 its incorporation.

36 (1) The determination of gross receipts of a
37 corporation, for purposes of this section, shall be made by
38 including the gross receipts of each member of the
39 commonly controlled group, as defined in Section 25105,
40 of which the bank or corporation is a member.

1 (2) “Gross receipts, less returns and allowances
2 reportable to this state,” means the sum of the gross
3 receipts from the production of business income, as
4 defined in subdivision (a) of Section 25120, and the gross
5 receipts from the production of nonbusiness income, as
6 defined in subdivision (d) of Section 25120.

7 (d) Subdivision (b) shall not apply to any corporation
8 if 50 percent or more of its stock is, or will be upon the
9 initial issuance of stock, owned by another corporation.

10 (e) (1) For income years commencing on or after
11 January 1, 1997 and before January 1, 1999, if a corporation
12 paid six hundred dollars (\$600) under paragraph (1) of
13 subdivision (b), but for its first income year the
14 corporation’s tax liability under Section 23151 exceeds
15 eight hundred dollars (\$800), or the corporation’s gross
16 receipts, as determined under paragraph (2) of
17 subdivision (c), exceed one million dollars (\$1,000,000),
18 an additional tax in an amount equal to two hundred
19 dollars (\$200) shall be due and payable by the corporation
20 on the due date of its return, without regard to extension,
21 for its first income year.

22 (2) For income years commencing on or after January
23 1, 1999, if a corporation paid three hundred dollars (\$300)
24 under paragraph (2) of subdivision (b), but for its first
25 income year the corporation’s tax liability under Section
26 23151 exceeds eight hundred dollars (\$800), or the
27 corporation’s gross receipts, as determined under
28 paragraphs (1) and (2) of subdivision (c), exceed one
29 million dollars (\$1,000,000), an additional tax in an
30 amount equal to five hundred dollars (\$500) shall be due
31 and payable by the corporation on the due date of its
32 return, without regard to extension, for its first income
33 year.

34 (f) The amendments made by the act adding this
35 subdivision shall apply to income years commencing on
36 or after January 1, 1999.

37 ~~SEC. 3. This act provides for a tax levy within the~~
38 ~~meaning of Article IV of the Constitution and shall go into~~

1 ~~immediate effect.~~
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